

## IN THE CIRCUIT COURT OF HENRY COUNTY, MISSOURI

AMY MILLAM,	)	
306 S 7 <sup>th</sup> St.	)	
Clinton, MO 64735	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
ZACKERY GARDINER,	)	Division
Serve at:	)	
500 Willow Ct.	)	
Lansing, KS 66043	)	
	)	
and	)	
	)	
OLD DOMINION FREIGHT LINE, INC.,	)	
Serve: Registered Agent	)	
The Corporation Company	)	
120 South Central Avenue	)	
Clayton, MO 63105	)	
	)	
	)	
Defendants.	)	

**PETITION FOR WRONGFUL DEATH**

Plaintiff Amy Milliam, by and through the undersigned counsel, and for her causes of action against Defendant Zackery Gardiner (“Defendant Gardiner”) and Defendant Old Dominion Freight Line, Inc. (“Defendant Old Dominion”), states, avers and alleges as follows:

1. Plaintiff Amy Millam is a citizen and resident of the State of Missouri, residing at 306 S 7<sup>th</sup> St., Clinton, MO 64735. Amy Millam is the surviving mother of Olivia Phillips.
2. Plaintiff Amy Millam the proper party to bring this action for the wrongful death of Olivia Phillips as her surviving mother, pursuant to R.S.Mo § 537.080.
3. Defendant Zachery Gardiner (“Gardiner”) is a citizen and resident of the State of Kansas, residing at 500 Willow Ct., Lansing, KS 66043.

4. Defendant Old Dominion Freight Line, Inc. (“Old Dominion”) is incorporated under the laws of the State of Virginia with its principal place of business in the State of North Carolina. It may be served with process through its registered agent, The Corporation Company, 120 South Central Avenue, Clayton, Missouri 63105.

5. This Court has personal jurisdiction over Defendants Gardiner and Old Dominion pursuant to R.S.Mo. § 506.210 and § 506.500 (1) and (3), in that Plaintiff’s causes of action arise from Defendants’ operation of a tractor-trailer on a public highway and tortious acts withing the State of Missouri.

6. This Court has personal jurisdiction over Defendants because Old Dominion maintains systematic, continuous and substantial connections with the State of Missouri, it operates and maintains at least four (4) service centers across the State of Missouri (in St. Louis, St. Joseph, Columbia and Springfield), and it operates a website that the citizens of the State of Missouri can access and apply for jobs or request shipping to and from the State.

7. Additionally, Defendant Old Dominion specifically targeted the State of Missouri by directing Defendant Gardiner to deliver goods to the State for their mutual financial benefit.

8. This Court has subject matter jurisdiction over this matter pursuant to R.S.Mo. § 478.070 and Mo. Const. Art. V § 14.

9. Venue is proper in this Court pursuant to R.S.Mo. § 508.010 because Olivia Phillips were first injured and killed in Henry County due to the wrongful acts and/or negligent conduct by the Defendants described herein.

10. On January 11, 2019, at approximately 4:10 p.m., Deann Phillips was driving a 2007 Mercury Montego (“the Montego”) westbound on Missouri 7 in Henry County, Missouri. Her stepdaughter Olivia Phillips was in the front passenger seat.

11. Then and there, Defendant Gardiner was operating a 2019 Freightliner tractor-trailer (“the tractor-trailer”) eastbound on Missouri 7.

12. At said time and place, the Montego crossed the center line into the eastbound lane of Missouri 7.

13. Defendant Gardiner operated the tractor-trailer in the eastbound lane and failed to avoid the oncoming Montego and struck the rear of the vehicle.

14. The collision resulted in the injuries and deaths of Olivia Phillips and Deann Phillips.

**COUNT I – WRONGFUL DEATH**  
**(Plaintiff Against Defendant Gardiner)**

15. Plaintiff hereby incorporates by reference all preceding allegations of Plaintiff’s Petition for Wrongful Death as if full set forth herein.

16. Defendant Gardiner was required to operate the tractor-trailer in a careful and prudent manner with the highest degree of care.

17. Defendant Gardiner breached that duty of care and was thereby negligent in one or more of the following respects:

- a. Failing to keep a careful lookout;
- b. Failing to look far enough ahead;
- c. Failing to sounds a warning;
- d. Failing to slow down;
- e. Failing to apply the brake in a timely manner;
- f. Failing to move to the shoulder to avoid a collision;
- g. Failing to swerve out of the way of the Montego;

- h. Failing to stop, swerve or slow after he knew, or by the use of the highest degree of care could have known, that there was a reasonably likelihood of a collision;
- i. Traveling too fast for the conditions;
- j. Traveling over the speed limit; and/or
- k. Other statutory and regulatory violations to be revealed during discovery.

18. As a direct and proximate result of the negligence described above, the tractor-trailer struck the Montego.

19. As a direct and proximate result of the negligent acts and/or omissions described above, Olivia Phillips suffered severe injuries and was killed.

20. As a direct and proximate result of the negligent acts and/or omissions of Defendant Gardiner described herein and the death of Olivia Phillips, Plaintiff has suffered damages for the pain and suffering that Olivia Phillips endured between the time of her initial injury and the time of her death, pecuniary losses by reason of her death, funeral expenses and the loss of the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training and support, as well as all other damages allowed under R.S.Mo. § 537.090 and/or Missouri law.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendant Gardiner and award a fair and reasonable amount to adequately compensate Plaintiff for all damages, including prejudgment interest, interest on the judgment, costs of this action, as well as such other and further relief as this Court deems just and proper.

**COUNT II – WRONGFUL DEATH - RESPONDEAT SUPERIOR**  
**(Plaintiff Against Defendant Old Dominion)**

21. Plaintiff hereby incorporates by reference all preceding allegations of Plaintiff's Petition for Wrongful Death as if full set forth herein.

22. At all relevant times, including at the time of the subject collision, Defendant Gardiner was the employee servant, and or agent of Defendant Old Dominion, and was acting within the course and scope of his employment and/or agency with Defendant Old Dominion.

23. The negligence of Defendant Gardiner as set forth above is imputable to Defendant Old Dominion, and Defendant Old Dominion is therefore vicariously liable for Defendant Gardiner's negligent acts and omissions under the doctrine of *respondeat superior*.

24. As a direct and proximate result of the negligent acts and/or omissions of Defendant Old Dominion described herein and the death of Olivia Phillips, Plaintiff has suffered damages for the pain and suffering that Olivia Phillips endured between the time of her initial injury and the time of her death, pecuniary losses by reason of her death, funeral expenses and the loss of the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training and support, as well as all other damages allowed under R.S.Mo. § 537.090 and/or Missouri law.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendant Old Dominion and award a fair and reasonable amount to adequately compensate Plaintiff for all damages, including prejudgment interest, interest on the judgment, the costs of this action, as well as such other. and further relief as this Court deems just and proper.

Respectfully submitted,

**DIPASQUALE MOORE, LLC**

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**ATTORNEYS FOR PLAINTIFF**